

Regular Session, 2010

HOUSE BILL NO. 590

BY REPRESENTATIVE KLECKLEY

FIRE PROTECT/FIRE MARSHAL: Provides with respect to fires of suspicious origin

1 AN ACT

2 To amend and reenact R.S. 40:1568(B) and to enact R.S. 40:1568(D), relative to the state
3 fire marshal; to provide the state fire marshal with the authority to issue subpoenas,
4 summon witnesses, and administer oaths and affirmations when investigating fires
5 of suspicious origin; to require fire marshal employees to serve any process that is
6 issued by the state fire marshal when investigating fires of suspicious origin; to
7 provide that a person who fails to properly answer a subpoena issued by the state fire
8 marshal shall be punishable by the judge as contempt; to authorize the judge to
9 enforce obedience by fine, imprisonment, or both; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1568(B) is hereby amended and reenacted and R.S. 40:1568(D)
12 is hereby enacted to read as follows:

13 §1568. Special investigations of fires of suspicious origin

14 * * *

15 B. In the performance of this duty, the fire marshal or his authorized
16 representative may take or cause to be taken testimony from persons supposed to be
17 cognizant of any fact which may relate to the cause of any fire. To this end, he may
18 secure testimony under oath and have it reduced to writing. In the furtherance of this
19 investigation, the fire marshal or his authorized representative has the power to issue
20 subpoenas and subpoenas duces tecum to compel the testimony of witnesses and the
21 production of documents, papers, books, records, and other evidence, and to

administer oaths and affirmations to those persons subpoenaed. Any fire marshal employee shall serve any subpoena or subpoena duces tecum directed to him by the fire marshal or his authorized representative.

* * *

D.(1) If any person refuses to obey any such subpoena, to give testimony, or to produce evidence as required thereby, any judge of the district court for the parish of East Baton Rouge may, upon ex parte application and proof of such refusal, make an order awarding process of subpoena or subpoena duces tecum out of the district court for the witness to appear before the fire marshal or his authorized representative and to give testimony and to produce evidence. Upon filing such order in the office of the clerk of the district court, the clerk shall issue process of subpoena, as directed under the seal of the court requiring the person to whom it is directed, to appear at the time and place therein designated.

(2) If any person served with any such subpoena refuses to obey the order and to give testimony and to produce evidence as required by the order, the fire marshal or his authorized representative may apply to any judge of the district court for an attachment against such person for contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable, or law enforcement officer, for the arrest of such person and, upon his being brought before such judge, proceed to a hearing on the matter. The judge shall have the power to enforce obedience to such subpoena, the answering of any question, and the production of any evidence that may be proper, by a fine not exceeding one hundred dollars, by imprisonment, or by both fine and imprisonment, and to compel such witness to pay the costs of such proceeding.

(3) Proceedings held pursuant to the provisions of this Subsection shall be
summary in nature.

(4) Any violation of a subpoena issued by the clerk or of any order issued by
the judge may be punishable by the judge as contempt.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Kleckley

HB No. 590

Abstract: Grants the state fire marshal the authority to issue subpoenas, summon witnesses, and administer oaths and affirmations when investigating fires of suspicious origin, and provides that a person who fails to properly answer a subpoena issued by the state fire marshal is punishable by the judge as contempt.

Present law provides that the fire marshal shall make or cause to be made a special examination of the circumstances surrounding each fire of suspicious origin and of any fire reported to have been caused by design.

Present law further provides that, in the performance of this duty, the fire marshal or his authorized representative may take or cause to be taken testimony from persons supposed to be cognizant of any fact which may relate to the cause of any fire. The fire marshal may secure testimony under oath and have it reduced to writing.

Proposed law provides that, in the furtherance of this investigation, the fire marshal or his authorized representative has the power to issue subpoenas, summon witnesses, and administer oaths and affirmations. Requires any fire marshal employee to serve any process that is directed to him by the fire marshal or his authorized representative.

Proposed law provides that any witness who refuses to obey the order and to give testimony and to produce evidence as required by the order shall be held in contempt, and authorizes the judge to enforce obedience by ordering that the witness pay a fine not more than \$100, be imprisoned, or both.

(Amends R.S. 40:1568(B); Adds R.S. 40:1568(D))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Added a provision that any witness who fails to respond properly to a subpoena issued by the state fire marshal is guilty of contempt and shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the engrossed bill.

1. Added a provision authorizing the fire marshal to issue subpoenas and subpoenas duces tecum.
2. Provided that any fire marshal employee shall serve the subpoena or subpoena duces tecum issued by the fire marshal.
3. Changed proposed law to provide that the failure to properly comply with a subpoena will be handled in a civil rather than criminal proceeding.
4. Authorized the judge, upon ex parte motion, to issue an order awarding process of the subpoena or subpoena duces tecum.

5. Authorized the judge, upon satisfactory proof of the person's refusal to comply with the order, to issue an attachment for the arrest of the person.
6. Authorized the judge to enforce obedience by a fine not to exceed \$100, imprisonment, or both, and to compel the person to pay court costs associated with the proceeding.
8. Provided that proceedings held pursuant to proposed law are summary in nature.